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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

COMMENTS ON AND OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

BellSouth Corporation and BellSouth Telecommunications, Inc. (BellSouth) hereby respond to the Petitions seeking reconsideration of the Commission's Report and Order released May 8, 1997 in CC Docket No. 96-45.[1]

In its May 8th *Universal Service Order*, the Commission took the initial steps in fulfilling its obligation under the Telecommunications Act of 1996 to establish an explicit funding mechanism to support universal service. Numerous parties seek clarification or reconsideration of a variety of matters pertaining to the Commission's *Universal Service Order*. In this response, BellSouth addresses the key issues raised in the petitions.

A. The Size And Adequacy Of The Universal Service Fund

The Telecommunications Act of 1996 requires that the Commission establish an explicit fund that will preserve and advance universal service.[2] Several state commissions seek reconsideration of the Commission's *Universal Service Order* claiming that the Commission's approach to establishing a federal universal service fund fails to meet the requirements of the

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1 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order (FCC 97-157), released May 8, 1997 ("*Universal Service Order*")

2 *See* 47 U.S.C. § 254.

statute. In essence, these parties claim that the Commission is shifting the burden of universal service high cost support to the states in direct contravention of the statute's mandate that the federal universal service fund "be sufficient to achieve the purposes of this [universal service] section." In this regard, these parties object to the Commission's determination that the responsibility for funding universal service support will be allocated between the federal and state jurisdictions on a 25/75 percent basis.[3]

The petitioners make clear that assigning to the states the responsibility for a substantial portion of universal service high cost support is a radical departure from existing policy. As the Arkansas Public Service Commission explained, the Commission's methodology results in "pulling the rug of federal support out from under consumers in rural high cost states."[4] They contend that there is no record basis for the allocation mechanism[5] and such allocation is inconsistent with the statute's mandate to establish a predictable and sufficient federal universal service fund.[6]

BellSouth has long advocated that the statute requires a sufficient federal universal service fund that would at least make all of the existing universal service support that is implicit in interstate access charges, explicit.[7] The approach that the Commission has chosen not only fails

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3 *See* Public Utility Commission of Texas at 2; Arkansas Public Service Commission at 1-3; Wyoming Public Service Commission at 1-4; Vermont Public Service Commission at 2-4.

4 Arkansas Public Service Commission at 1.

5 *See e.g.* Vermont Public Service Commission at 4.

6 Arkansas Public Service Commission at 1. Without a sufficient federal fund the Commission cannot ensure that consumers in all regions of the nation have reasonably comparable rates and services. *See also* US West at 6; Rural Telephone Coalition at 1-3.

7 The Public Utility Commission of Texas (p.3) suggests that reducing interstate access charges by the net amount a LEC receives from the high cost fund diverts such support from its intended purpose, keeping the rates for basic universal service low. The Texas Commission,

to achieve this minimum requirement but also ensures that the primary responsibility for universal service is shifted to the states, notwithstanding the fact that the states have no obligation to support universal service.[8] If the states fail to establish a mechanism for the 75 percent of the high cost support that has been assigned to them, then three-quarters of the support the Commission's methodology identified as essential to ensuring universal service will go unfunded. Such a result is contrary to the express language of Section 254.[9] The Act imposes the responsibility of supporting universal service upon the Commission. The petitioners are correct that the Commission's current approach to establishing a federal universal service fund cannot satisfy the statute's mandate that affordable universal service be made available to all consumers across the nation. Accordingly, the Commission should reconsider its decision and eliminate the 25/75 percent allocation scheme.

B. Participation In and Contribution To The Universal Service Fund

As difficult an issue as properly defining and sizing the federal universal service fund is, equally complex issues surround the manner in which carriers will participate in and contribute to the high cost fund. Several petitioners have identified anomalies in the Commission's decision regarding the eligibility of carriers who might offer universal services through resale and unbundled network elements. For example, Time Warner notes that because the Commission has not identified the level of "own facilities" that a carrier must have to qualify for universal service

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however, overlooks the fact that interstate access charges currently are providing an implicit subsidy to universal service. Nothing in the way of jurisdictional separations changes have been made to remove those implicit subsidies from access charges. Thus, it is appropriate to first reduce interstate access charges to reflect net receipts from the federal universal service fund.

[8] *See* Ex Parte comments on Iowa Utilities Board, filed July 8, 1997 at 3.

[9] 47 U.S.C. § 254.

support, the situation could arise that a carrier that is virtually providing service through resale could potentially qualify for universal service support.[10] The example used by Time Warner clearly illustrates the potential anomaly--a carrier that uses its own facilities to provide operator services but in all other respects provides local service through resale could qualify for support.[11] Clearly in this situation, the cost of the carrier's own facilities is small relative to the cost of universal service that the fund supports and that the carrier would receive. Further, the carrier, like other resellers, is receiving the local services at discounted retail rates that already reflect universal service support. The Commission could not have intended to confer artificial advantages upon certain resellers. Indeed, to do so would be inconsistent with the principle of competitive neutrality that the Commission has adopted. Support should not be provided for presold lines. Accordingly, the Commission should clarify this aspect of its decision.

Clarification of the level of "own facilities" necessary to qualify for universal service support alone is insufficient. There is yet another anomaly in the Commission's order. This anomaly surrounds the use of unbundled network elements. As discussed in the Rural Telephone Coalition's petition, the problem arises because under the Commission's decision a carrier using unbundled network elements to provide service would receive as universal service support the full price of the unbundled network elements.[12] This approach creates competitive distortions in that the support received by an incumbent LEC is based on the difference between the cost of universal service and an arbitrary benchmark rate. In other words, for the incumbent, the Commission's methodology takes into account the fact that the LEC is receiving revenue from the

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10 Time Warner at 2-3.

11 *Id.*

12 Rural Telephone Coalition at 8, 21. *See also* US West at 17-18.

end user. For the competitive carrier, on the other hand, the universal service fund completely reimburses the carrier for its cost. No adjustment is made to reflect the end user revenues that the competitive carrier receives. In BellSouth's view, the Commission should at least modify its methodology to have the universal service support received by competitive carriers reflect the difference between the end user revenues received and the price of the unbundled network elements. Such a modification is the minimum adjustment necessary to secure competitive neutrality

Like participation in the universal service fund, there are aspects concerning contribution to the universal service fund that require clarification or modification. USTA, in its petition, identifies that the Commission's approach could lead to double counting some revenues.[13] Specifically, with regard to payphones, the revenues that LECs receive from payphone service providers are end user revenues and are included in determining the LECs' contributions to the universal service fund.[14] The payphone service provider includes revenues it receives from users of its service. The revenue the payphone service provider generates from its service must cover the cost of the subscriber line charge and access line charge that it pays to LECs. Thus, with both the LEC and the payphone service provider including their end user revenues to calculate their universal service contributions, the revenues associated with the payphone service providers subscriber line charges and access lines are effectively double counted. To eliminate the double counting, USTA recommends that LECs be permitted to exclude the revenues received from

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[13] USTA at 15.

[14] Specifically, the end user revenues are associated with the subscriber line charge and the access line charge that are assessed to payphone service providers.

payphone service providers.[15]

APCC also identified the double counting that will occur with regard to payphone operations. As a remedy, APCC suggests that payphone service providers be able to deduct from their calculation of end user revenues the subscriber line and access line (including usage) charges that they pay to LECs. BellSouth supports APCC's suggested remedy to the double counting issue.[16]

Another contribution-related issue was raised by CTIA. As CTIA explains, CMRS providers have not had to be concerned with the traditional (wireline) distinctions of interstate and intrastate jurisdictions. State borders have not been a concern in designing and deploying CMRS networks. Nor has there been a particular need for CMRS providers to distinguish between interstate and intrastate calls. Thus, tracking the jurisdictional nature of CMRS traffic raises complex engineering and billing issues.[17] BellSouth supports CTIA's recommendation that the Commission adopt flexible guidelines for CMRS providers that simplify the tracking process.[18] Along these lines, CTIA suggests as a starting point that the Telecommunications Relay Service (TRS) Rules form the basis for tracking interstate and intrastate revenue for universal service purposes.[19] BellSouth concurs with CTIA that a TRS approach offers the simplicity and flexibility necessary to make compliance with universal service contribution obligations workable for CMRS.[20] Accordingly, the Commission should provide the additional clarification and

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15 USTA at 16.

16 APCC at 11.

17 CTIA at 14-18.

18 *Id.* at 18.

19 *Id.* at 20-22.

20 *Id.* at 21. Although use of special studies, as provided for in the TRS approach, will

guidance regarding CMRS revenue as requested by CTIA.

C. Recovery of Contributions

While the Telecommunications Act is specific as to the obligation to contribute to a universal service fund, it does not address the way in which those contributions by carriers should be recovered. In this regard, several petitioners find the Commission's *Universal Service Order* lacking. US West and AT&T request that the Commission reconsider its decision and institute an end user surcharge as the means by which contributing carriers recover their universal service contributions.[21] BellSouth supports these requests. An end user surcharge is the recovery mechanism that is most consistent with the Act's requirement that universal service support be made explicit. To the extent that universal service contributions are recovered through service rates, such as access charges, then the very system of implicit support that the Telecommunications Act intended to be displaced will instead be perpetuated. Further, an end user surcharge ensures competitive neutrality. All carriers will recover their universal service contributions in the same manner and therefore no carrier would be advantaged or disadvantaged by factors such as incumbency or size of customer base.

If the Commission does not reconsider its decision regarding end user surcharges, then the Commission should clarify its decision that carriers can recover contributions through any rate design that is permitted by law. Contributing carriers are not subject to the same regulatory approaches. Some carriers such as CMRS providers are not subject to rate regulation, state or

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simplify separation of intrastate and interstate revenues, additional guidelines regarding the determination of end user revenues are needed. CTIA identifies several of these guidelines such as adjustment to exclude wholesale and intercarrier revenues. Included in the adjustment for intercarrier revenues should be revenues associated with interconnection. Also excluded from end user revenues should be any subsidies provided to end users for CPE.

[21] US West at 9-11; AT&T at 5-7.

interstate, by law. In other instances, such as interexchange carriers, the Commission has forborne from rate regulation. These varying regulatory structures or their absence have affected the shape of service offerings. Accordingly, carriers should be able to recover their universal service contributions from all the services and all of their customers so long as the approach chosen does not conflict with regulatory rules that may apply to the specific carrier.[22]

In the same light, the Commission should clarify its *Universal Service Order* regarding the ability of carriers to pass-through their contributions to customers who obtain their services pursuant to contracts entered into prior to the Commission's decision.[23] The Commission recognized the need for carriers to recover a portion of their universal service contributions from contract customers. The universal service obligation is a new government mandate imposed upon carriers that could not have been and was not anticipated when the contracts were made. The public interest, which the Commission is obligated to advance, requires that carriers be afforded the opportunity to modify these contracts. The *Universal Service Order* confirms this conclusion.

The ambiguity, however, arises from a statement in the *Universal Service Order* wherein the Commission stated that it did not intend to preempt state contract laws. This statement is being seized upon by some to support the proposition that the Commission cannot permit carriers to pass-through contributions to contract customers because such pass-through would be inconsistent with state contract law.[24] The ambiguity can be removed if the Commission clarifies its *Universal Service Order*, as recommended by CTIA, that it did not intend to preempt state

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[22] This is particularly necessary in the case of CMRS providers where traditional notions of jurisdiction are not readily applicable. For example, a customer does not purchase an interstate CMRS service separate from its intrastate CMRS service.

[23] *See e.g.*, CTIA at 23-24.

[24] *See e.g.*, Ad Hoc at 3.

contract law except to the extent necessary to permit carriers to pass-through its universal service contributions.[25]

D. Lifeline

As part of its *Universal Service Order*, the Commission overhauled the Lifeline program. The Kansas Corporation Commission seeks reconsideration of the Commission's requirement that participation in the Lifeline program be limited to local carriers that have been designated as eligible carriers. To the extent that Kansas' petition seeks modification or clarification by the Commission that resellers can receive reimbursement for any Lifeline credits that it provides qualified end users, BellSouth has no objection.[26] Coincident with this clarification, however, the Commission should also make clear that Lifeline is a federal/state program for which customers receive credit for otherwise applicable service charges. Lifeline is not a service, subject to resale.[27]

MCI urges the Commission to modify its *Universal Service Order* and adopt a single Lifeline eligibility criteria that would be applied nationwide.[28] There is no basis for a nationwide Lifeline eligibility criteria. The Lifeline program originated ten years ago. It was premised on each state establishing its own eligibility criteria. Since its inception, 43 states have enacted Lifeline programs. Nothing in MCI's petition would warrant disturbing an approach that has

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25 *See* CTIA at 24.

26 Eligible carriers, however, should not be able to obtain high cost support unless they also participate in the Lifeline program. Likewise, as urged by USTA, an eligible carrier should not be able to receive high cost support unless customers have the opportunity to obtain universal service on a stand-alone basis. USTA at 15.

27 *See* USTA at 14

28 MCI at 8-10.

proven to be successful.[29]

USTA seeks reconsideration of the *Universal Service Order*'s requirement that carriers provide customers who participate in the Lifeline program with toll limitation to the extent that this requirement defines toll limitation as both toll blocking and toll control.[30] As USTA correctly points out, toll control places a significant burden on LECs but is unlikely to be effective in limiting toll calls.[31] The intent of the Commission's decision can be achieved without creating this unnecessary burden if the Commission modifies its definition of toll limitation to mean either toll blocking or toll control.[32]

Lastly, the US Catholic Conference requests the Commission to clarify that customers participating in the Lifeline program would not be assessed a PICC.[33] In the Commission's *Access Charge Reform Order* the Commission established a new flat rate charge, PICC, that would be assessed to interexchange carriers for each line that is presubscribed to it. In the event the line is not presubscribed to an interexchange carrier, the PICC is to be assessed to the end user. Because a feature of the Lifeline program is toll limitation, the line may well not be presubscribed. In these instances, it would make sense that the PICC, like the subscriber line charge, be eligible for a credit through the Lifeline program.

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29 Likewise there is no merit to Benton's request that the Commission create an ombudsman and clearinghouse for Lifeline information. Benton Foundation and Edgemont Neighborhood Coalition at 2-4. The states have consumer advocates from which relevant information can be obtained. There simply is no reason for the administrative expense to be incurred to establish a bureaucracy, the cost of which ultimately would be borne by telecommunications consumers.

30 USTA at 4-7.

31 *Id.* at 5-6.

32 *Id.* at 6.

33 US Catholic Conference at 4-5.

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As discussed above, there are several aspects of the *Universal Service Order* that should be reconsidered or clarified. By making these modifications, the Commission would not only be following the mandate of the Telecommunications Act but in addition would implement the spirit of the Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of August, 1997 served all parties to this action with a copy of the foregoing **COMMENTS ON AND OPPOSITIONS TO PETITIONS FOR RECONSIDERATION** by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties list on the attached service list.

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